

THAILAND

TRADE SUMMARY

Ex. 5 Deliberative Process (DP)

TRADE AGREEMENTS

Ex. 5 Deliberative Process (DP)

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

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Ex. 5 Deliberative Process (DP)

Nontariff Barriers

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Ex. 5 Deliberative Process (DP)

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Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

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Ex. 5 Deliberative Process (DP)

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

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Labeling Requirements on Alcoholic Beverage

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Import Restrictions on Beef and Beef Products

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Plant Quarantine Restrictions

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Import Restrictions on Pork

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Import Bans on Poultry

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SUBSIDIES

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GOVERNMENT PROCUREMENT

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INTELLECTUAL PROPERTY PROTECTION

Thailand remained on the Watch List in the 2019 Special 301 Report. While Thailand has made progress on intellectual property (IP) protection and enforcement, including by improving coordination on enforcement efforts to combat counterfeit and pirated goods and by taking legislative and administrative steps to address backlogs for patent and trademark applications, concerns remain. The United States remains concerned about the availability of counterfeit and pirated goods, both in physical markets and online, as highlighted by the continued inclusion of Patpong Market in Bangkok in the 2019 Out-of-Cycle Review of Notorious Markets. Other U.S. concerns include the widespread use of unlicensed software in both the public and private sectors, extensive cable and satellite signal theft, camcording of movies, overly broad exceptions to laws that penalize the unauthorized circumvention of technological protection measures, and continuing lack of effective enforcement against online piracy and counterfeiting.

The United States continues to encourage Thailand to provide an effective system for protecting against the unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical and agricultural chemical products. In addition, the United States urges Thailand to engage in a meaningful and transparent manner with all relevant stakeholders before adopting new IP laws, regulations, or guidelines, including on pharmaceutical issues.

SERVICES BARRIERS

Audiovisual Services

The Thai Ministry of Culture is in the process of reviewing the Motion Picture and Video Act, which gives Thailand's Film Board the authority to establish ratios and quotas limiting the importation of foreign films, although the Film Board has not exercised that authority to date as of the end of 2019. Foreign investment in terrestrial broadcast networks is limited to 25 percent of registered capital and voting rights.

Express Delivery

Private express delivery companies must pay postal fees and penalties for delivery of documents in Thailand. These fines amount to an average of 37 baht per item (slightly more than \$1) for shipments that weigh up to two kilograms. Thailand also imposes a 49 percent limit on foreign ownership of companies providing land transport services.

Financial Services

Thailand limits the number of licenses for foreign bank branches and subsidiaries and accepts applications only periodically. The latest round of applications for new licenses was in 2013. Consistent with the Financial Sector Master Plan Phase 2, five new foreign banking licenses to operate as a subsidiary and supply the full scope of services were made available. Out of the five licenses allowed by the quota, Thailand granted new subsidiary licenses to two foreign banks. In addition, Thailand may grant new foreign banking licenses to banks from certain countries, subject to Thai banks being offered reciprocal treatment. Under this program, Thailand has started to offer foreign banking licenses to banks from ASEAN countries under the ASEAN Banking Integration Framework.

Foreign bank branches and subsidiaries can supply all types of financial services offered by local banks. In 2018, the Bank of Thailand expanded the types of service points allowed for foreign bank operations to include physical branches, off-premise ATMs, and appointed agents. As of the end of 2019, foreign subsidiaries may operate up to 40 service points, while foreign branches may open a maximum of three service points.

Foreign investors are able to establish wholly-owned bank subsidiaries. Foreign investment in existing domestic banks is limited to 25 percent of shares, although the Bank of Thailand can raise this amount to 49 percent on a case-by-case basis. In addition, the Minister of Finance, with a recommendation from the Bank of Thailand, may authorize foreign ownership above 49 percent if it is deemed necessary to support the stability of a financial institution or the overall financial system during an economic crisis.

Since 2013, Thailand has required processing in Thailand of all retail domestic debit electronic payment transactions for debit cards issued in Thailand so that foreign suppliers are precluded from supplying these services cross-border and must establish a local presence and build processing facilities in Thailand.

Foreign equity in life and non-life insurance companies is limited initially to less than 25 percent of the total number of voting shares that have been sold, and foreign directors may hold no more than 25 percent of the board of director seats. However, in 2015 and 2016, the Thai government relaxed the criteria for the Office of Insurance Commission (OIC) to allow a company to increase the foreign equity permitted to up to 49 percent and the seats held by foreign directors to up to one-half of the board, if the company meets conditions relating to improving efficiency and competitiveness. In addition, under certain circumstances, such as for the purpose of strengthening the overall stability of the insurance sector, the Ministry of Finance, with the recommendation of the OIC, may permit a company to have foreign ownership exceeding 49 percent or foreign directors comprising more than one-half of the board or both. The OIC is in the process of amending the law to relax restrictions on the foreign ownership of insurance companies. The draft amendment would grant the OIC Board, instead of the Ministry of Finance, the authority to approve the increased foreign equity and foreign directors. Nonetheless, the OIC approval must be in accordance with criteria, procedures, and conditions or timeframe determined by the Ministry of Finance.

Professional Services

Legal Services

U.S. investors may own law firms in Thailand only if they enter into commercial association with local attorneys or local law firms, and foreign nationals (with the exception of “grandfathered” non-citizens) may not provide legal services. In certain circumstances, foreign attorneys can obtain a limited license entitling them to offer advisory services in foreign and international law.

Accounting Services

Thailand’s Foreign Business Act reserves accounting services for Thai nationals unless specific, onerous conditions are met. As a result, foreign nationals cannot serve as professional accountants in Thailand. In addition, foreign nationals cannot be licensed as certified public accountants unless they are citizens of a country with a reciprocity agreement, pass the required examination in Thai, and legally reside in Thailand. Foreign accountants may serve as business consultants. Foreign nationals are permitted to own only up to 49 percent of an accounting professional service and only through a limited liability company registered in Thailand.

Engineering Services

Thailand’s Engineering Act assigns four classifications of engineering professionals: senior professional engineer, professional engineer, associate engineer, and adjunct engineer. Foreign engineers can only be certified as adjunct engineers, the lowest classification, regardless of qualifications. Applicants must pass an oral exam in Thai language (an interpreter with no engineering background can be used during the oral exam). Businesses have expressed concerns that the restrictions allow foreigners to work only in a small

set of civil engineering services, and that local members of the profession control the onerous process in order to limit competition.

Telecommunications Services

Thai law allows foreign equity up to 49 percent in basic telecommunications service providers and higher levels of foreign equity for providers of value-added services. This constitutes an improvement on the 20 percent foreign equity cap listed in Thailand's provisional 1997 WTO commitments. However, Thailand has not revised its WTO General Agreement on Trade in Services (GATS) schedule, as it committed to do, to reflect these higher foreign-equity limits and its adoption of pro-competitive regulatory measures (*e.g.*, mandatory interconnection). Thailand also maintains regulations to restrict "foreign dominance" in telecommunications operators, which the National Broadcasting and Telecommunications Commission has defined as holding at least half of all voting rights, having controlling power over the majority vote in shareholder meetings, or having the ability to appoint or remove half of directors.

BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

Technology

Thailand's National Legislative Assembly (NLA) passed the National Cybersecurity Act (CSA) on February 28, 2019, and it entered into force in May 2019. The law is designed to strengthen the cybersecurity capabilities of government agencies. U.S. stakeholders have raised concerns that the law would grant a new Office of the National Cybersecurity Committee (also referred to as the National Cybersecurity Agency) broad powers to demand confidential and sensitive information without sufficient protections to circumscribe such access or to appeal the Committee's decisions.

On February 28, 2019, the NLA passed the Personal Data Protection Act (PDPA). The PDPA will enter into force in May 2020. The law creates a Personal Data Protection Committee (PDPC) and Expert Committees that are empowered to fine companies for noncompliance (up to THB 5 million or approximately \$ 158,000) and to provide information to law enforcement for use in criminal cases, with penalties to include imprisonment up to one year and/or fines up to THB 1 million (approximately \$31,600). Formation of the PDPC is underway as of February 2020. U.S. stakeholders have raised concerns that the law creates unreasonable burdens and legal uncertainty in the technology sector, raises potential impediments to international data transfers, and gives over-broad powers to the PDPC and Expert Committees.

Internet Services

The Computer Crime Act of 2007, amended in December 2016, greatly expanded the Thai government's authority to regulate online content. Among other changes, the amendments led to the creation of a "Computer Data Filtering Committee," which has the power to obtain court approval to block a range of websites, including those that the Committee finds disseminate information violating public order. There has never been a successful appeal or reversal of the Committee's decisions.

The amended Computer Crime Act raises particular concerns for online services that host non-IP-protected user-generated content. For the first time, the 2016 amendments established a shield from liability with respect to non-IP-protected content for service providers that comply with requirements to remove certain content within specified timeframes. However, the mandated timeframes vary across content types and are as short as 24 hours for some types of content. Without strict compliance, service providers will be subject to penalties as though they had created the offending content themselves. This places a considerable burden

on online services that depend on non-IP user-generated content, discouraging investment and encouraging proactive censorship by consumers.

Some U.S. stakeholders also note that, with respect to copyright-protected content, the amended Computer Crimes Act has improved the environment for enforcement against online piracy.

INVESTMENT BARRIERS

Limitations on Foreign Equity Participation

The Foreign Business Act (FBA) lays out the framework governing foreign investment in Thailand. Under the FBA, a foreigner (defined as a person who is not a Thai national, a company that is not registered in Thailand, or a company in which foreign ownership accounts for 50 percent or more of total shares) must obtain an alien business license from the relevant ministry before commencing business in a sector restricted by the FBA. Although the FBA prohibits majority foreign ownership in most sectors, U.S. investors registered under the United States–Thailand Treaty of Amity and Economic Relations (AER) are exempt. However, U.S. investment is prohibited under the AER in the following areas: communications, transportation, fiduciary functions, banking involving depository functions, the exploitation of land or other natural resources, domestic trade in indigenous agricultural products, and the practice of professions reserved for Thai nationals.

OTHER BARRIERS

U.S. stakeholders have expressed concern that processes used by the Thai government for revising laws and regulations affecting trade and investment lack consistency or transparency.

There are serious concerns about Thailand’s increasingly unpredictable and opaque pharmaceutical procurement regulations. The Government Pharmaceutical Organization, a state-owned entity, is not subject to Thai Food and Drug Administration licensing requirements on the production, sale, and importation of pharmaceutical products. U.S. stakeholders have expressed concerns about the lack of transparency and due process in the administration of the Thai government’s National List of Essential Drugs for procurement of pharmaceutical products dispensed at government hospitals. The Thai Ministry of Public Health currently sets the “median price or maximum procurement price” (MPP) for each medicine included on the Main Price List of Essential Drugs. Only medicines included on this list are eligible for government procurement. The current methodology and implementation of the MPP policy lacks transparency, predictability, and uniformity.

There are concerns about recent changes to the Drug Act, which came into effect in October 2019 that could affect negatively the registration of patented medicines. The amendment requires applicants for drug registration to disclose patent documents as part of their dossiers. While sequential ministerial notifications provided some information about the revised registration process, pharmaceutical companies remain wary that the status of drug registrations completed prior to the amendment remains unclear.

Bribery and Corruption

Despite ongoing legislative and administrative efforts to address corruption, the issue continues to hamper Thailand’s economy and trade. The National Anti-Corruption Commission (NACC) is the primary body vested with powers and duties to counter corruption in the public sector. However, several agencies have jurisdiction over corruption issues, and their actions are not always complementary. Thai law enforcement’s investigative and prosecutorial capacity is limited, and Thai laws focus predominantly on abuse of office rather than financial or asset-related malfeasance. Anticorruption mechanisms continue to

be employed unevenly and for political purposes, and the lack of transparency in many administrative procedures serves to facilitate corruption.

On July 22, 2018, a new anticorruption law (known officially as the Act Supplementing the Constitution Relating to the Prevention and Suppression of Corruption B.E. 2561 (2018)) came into effect, repealing and replacing the 1999 Organic Act on Counter Corruption and its various amendments. The anticorruption law maintains a key provision criminalizing bribe-giving by legal entities but expands the definition of the legal entities to include any foreign company (registered abroad but operating in Thailand) and its associated persons (employees, joint venture partners, agents, etc.). The mandatory fines for bribery are at least an equal amount of the benefit received from the corrupt act, but not more than twice that amount. The 2018 law allows NACC to seek international cooperation in investigations.